IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 24 OF 2001

1. Shri Inacio Ferrao
S/o. Jose Ferrao (deceased),
major, married,

2. Smt. Hilda Pereira E Ferrao
wife of Inacio Ferrao

Both resident of House No. 1276,
Raia, Sonarvaddo,
Salcete, Goa. .... Appellants

V/s

1. Smt. Rosa Sebastiana Ferrao Correia
d/o. Jose Ferrao (deceased)
widow of Benedito Correia,
resident of Raia, Sonarvaddo, Salcete, Goa.

2. Smt. Cecilia Natalia Ferrao Souza
d/o Jose Ferrao (deceased)
major, wife of Shri Martino Souza.

3. Shri Martinho Souza
major, both residents of Macazana,
Near the Panchayat Office,
Salcete, Goa.

4. Smt. Agnela Ferrao
d/o. Jose Ferrao (deceased)
major, wife of Shri Cedric Gonsalves.

5. Shri Cedric Gonsalves,
major,

Both residents of
Margao Hospital Quarters,
Margao, Salcete Goa.

6. Shri Camilo R. Ferrao,
major, married.

7. Smt. Francisca Ferrao
major, wife of Camilo Ferrao.

Both resident of H.No. 1276, Raia,
Sonarvaddo, Salcete, Goa. .... Respondents

Mr. M.S. Usgaonkar, Senior Advocate with Mr. Sudesh Usgaonkar, Advocate for the Appellants.

Mr. M.B. D'Costa, Senior Advocate with Mr. J.A. Lobo, Advocate for Respondents No. 6 & 7.

CORAM : N.A. BRITTO, J.

Date : 23rd AUGUST, 2007

JUDGMENT :

Heard learned Senior Counsel on behalf of the parties.

2. This appeal is directed against the order dated 12/02/2001 of the learned Comarca Judge, Margao.

3. Inventory Proceedings were initiated to partition the estate of Jose Ferrao who left behind his widow Smt. Ludovina Mendes and two sons and three daughters. Smt. Ludovina Mendes having been appointed as Administratrix, filed the list of assets in the year 1999 in terms of Article 2073 of the Civil Code, 1869 and Article 1377 of the Portuguese C. P. C., 1939, (C. P. C., for short).

4. Upon the death of the said Administratrix, Shri Inacio Ferrao

(appellant no.1, herein) probably being the eldest in the family, came to be appointed as Administrator and he filed additional list of assets on or about 21/8/1999 and no objection was taken to the said list of assets by any of the other interested parties.

5. On or about 29/06/2000, the present Administrator filed an additional list indicating item nos. 6,7 & 8. Item no.6 is that Rosa Sebastiana Ferrao Correia was given articles worth Rs. 8,000/- at the time of her marriage; Item no.7 is regarding share in the estate of the value of Rs. 14,000/- given to Cecilia Natalia Ferrao, out of which the Administrator paid Rs. 6,000/- and item no. 9 is Rs. 14,000/- paid to Agnela Ferrao at the time of her marriage. These are, as per the Administrator, the debts which the said interested parties owe to the estate. The prayer in the said list was that the said items be listed to the main list of assets.

5. By impugned order dated 12/02/2001, the learned Comarca Judge has rejected the said application/additional list of assets/debts, inter alia, stating that under Article 1379 of the said Code, the one who raises anything to be added to the list of assets had to satisfy that he got the knowledge of the existence of the property only on the date when he presented the application and, there was no proof or document that the said properties were given to the interested parties and as such it will be futile to start the inquiry.

6. Filing of the lists of assets is dealt with by Article 2073 of the Civil Code, 1869 and Article 1377 of the Civil Procedure Code, 1939. Admittedly, and as rightly pointed out by the learned Senior Counsel on behalf of the Respondents, when the mother, the Administratrix filed the lists of assets, way back in the year 1991, the present Administrator did not complain that there was lack of description of the debts. Likewise, the present Administrator also did not include the said debts to the estate in the additional list dated 21/08/1999 filed by him. The Administrator has also not made good the said list of debts by any supporting documents, which would be required to be done in terms of Article 2077 of the Civil Code, 1869. There was no option for the Comarca Judge not to accept the additional list dated 21/08/1999, apparently because there was no objection from the other interested parties, but that does not necessarily mean that every time the Administrator files an additional list, an inquiry has got to be held to prove the same. Both the parties also did not choose to refer the present additional list for the deliberation at the conference of the parties in as much as no useful purpose would be served now to call for such a conference for deliberating the same since now there is a strong objection from the other interested parties for accepting the said additional list of debts.

7. Learned Senior Counsel on behalf of the Administrator contends that a time limit could be set so that a summary inquiry can be held to prove the

said debts, and, this submission is made in answer to the allegation of other interested parties that the Administrator is only interested in delaying the proceedings of inventory.

8. Sole paragraph of Article 1379 of C.P.C. states as follows:

> Sole paragraph: The lack of description of the properties may be raised subsequently at any time; but one who raises it shall satisfy that he got the knowledge of the assistance of the properties only on the date he presented the application. There upon the procedure prescribed in the next Article shall be followed.

In my view, the said provision was certainly and equally applicable to the present Administrator since he had not earlier complained about the lack of description of debts when his mother had filed the list and therefore had to satisfy the Court that he had obtained the knowledge of the debts on the date he filed the application, which was not done by him. Moreover, in the absence of any documents, proving the said debts would take as much time as normally is taken for an ordinary Civil Suit for recovery of money and that cannot be done in a summary inquiry.

9. Considering that the present Administrator had chosen not to complain about the lack of description of the said debts when his mother, the then Administratrix had initially filed the list of assets, and considering that the Administrator also did not include them in the list filed by him in the year 1999 and in the absence of any explanation on the part of the Administrator

that he came to know about the existence of the said assets on the date he filed the list, and otherwise also considering that proving the said debts would require a larger investigation to be made, the only option which was available to the learned Comarca Judge was to direct the Administrator to pursue his ordinary remedy of proving the said debts. If list of assets or liabilities are allowed to be filed piecemeal from time to time that would be the best way for an Administrator to continue with the administration of the properties, by depriving others from the fruits of the same and delaying the proceedings indefinitely. Inventory proceeding by their very nature being summary proceedings are required to be disposed off within a reasonable time.

7. In view of the above, I find there is no merit in this appeal. The Administrator would be at liberty to pursue ordinary remedy as far as the recovery of said debts are concerned. With the above observations, the appeal is dismissed.

N.A. BRITTO, J.

NH/-